

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 15, 2012

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Constant, Kalra, Nguyen, Rocha; Reed.

Absent: Council Members - Chu, Herrera, Liccardo, Oliverio, Pyle. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Ward, et al. v. City, et al.; Names of Parties Involved: Debra Ward, Patricia Tapia, City of San José, Fire Chief William McDonald; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-203561; Amount of Money or Other Relief Sought: Damages according to proof; (2) Espinoza v. City; Names of Parties Involved: Ricky Espinoza, City of San José, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV163127; Amount of Money or Other Relief Sought: Damages according to proof; (3) McDonough, et al. v. City, et al; Names of Parties Involved: City of San José, Dennis D. Hawkins, in his official capacity as City Clerk of the City of San José, Barry Garner, in his capacity as Registrar of the Voters of the County of Santa Clara, Karen McDonough, Franco Vado, Robert Sapient, Clifford G. Hubbard; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-220781; Amount of Money or Other Relief Sought: Petition for writ of mandate; (4) SJPOA v. City of San José; Names of Parties Involved: San José Police Officers Association, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-220146; Amount of Money or Other Relief Sought: Petition to compel arbitration. (B) to confer with Legal

CLOSED SESSION (Cont'd.)

Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in one (1) matter; (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:45 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Reverend Jon Talbert, Beautiful Day, presented the Invocation. (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed and the Third Graders from John Muir Elementary School led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of the accreditation plaque to Happy Hollow Park and Zoo by the Association of Zoos and Aquariums. (Mayor/Nguyen/Parks, Recreation and Neighborhood Services)

Executive Director Kris Vehrs, the Association of Zoos and Aquariums recognized and commended the City of San José Happy Hollow Park and Zoo for successfully achieving the national accreditation for the highest standards of animal care and management, conservation and research, education programs and the quality of Staff.

1.2 Presentation of a proclamation declaring the month of May 2012 as “Foster Care Month” in the City of San José. (Mayor)

Mayor Reed recognized the month of May 2012 as “Foster Care Month” in the City of San José.

1.4 Presentation of a commendation to Song That Radio for their advocacy and efforts to educate the community on issues related to the Vietnamese lesbian, gay, bisexual, and transgender community. (Nguyen/Herrera/Rocha/Oliverio)

Mayor Reed, Vice Mayor Nguyen and Council Members Herrera, Rocha and Oliverio recognized and commended to “Song That Radio” for their outstanding advocacy and exemplary efforts.

1.5 Presentation of a commendation to local businesses for their generous contributions towards Operation Prom Dress. (Nguyen)

Mayor Reed and Vice Mayor Nguyen recognized and commended local businesses for their generous contributions towards Operation Prom Dress.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of Minutes.

Action: There were none.

2.2 Final Adoption of Ordinances.

Action: There were none.

2.3 Approval of Council Committee Reports.

Action: There were none.

- 2.4 (a) **Request for an excused absence for Council Member Liccardo from the Regular Meeting of the Community and Economic Development Committee on May 21, 2012 due to pre-arranged travel for nephew's graduation. (Liccardo)**
(Rules Committee referral 5/9/12)

Documents Filed: Memorandum from Council Member Liccardo, dated May 21, 2012, requesting an excused absence.

Action: The absence for Council Member Liccardo was excused. (11-0.)

2.5 City Council Travel Reports.

Vice Mayor Nguyen presented highlights of her trip to Washington D.C. last week.

2.6 Report from the Council Liaison to the Retirement Boards.

Council Member Constant presented highlights of the Police and Fire Retirement Board Meeting of May 3, 2012.

- 2.7 (a) **Approve an agreement with Ricondo & Associates, Inc. for airport financial consultant services for an initial three year term from July 1, 2012 to June 30, 2015, providing compensation not to exceed a maximum of \$500,000.**
(b) **Adopt a resolution authorizing the City Manager to exercise up to two one-year options to extend the agreement at the City's sole discretion.**
CEQA: Not a Project, File No. PP10-066(d), Consultant Services for Design/Study/Research/ Inspection. (Airport)

2.7 (Cont'd.)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, A.A.E., dated April 23, 2012, recommending approval of an agreement and adoption of a resolution.

Director of Aviation William F. Sherry responded to questions from Council Member Rocha.

Action: Upon motion by Council Member Rocha, seconded by Council Member Constant and carried unanimously, an agreement with Ricondo & Associates, Inc. for airport financial consultant services for an initial three year term from July 1, 2012 to June 30, 2015, providing compensation not to exceed a maximum of \$500,000 was approved and Resolution No. 76211, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Exercise Up to Two (2) One Year Options to Extend the Agreement with Ricondo and Associates, Inc. for Financial Consultant Services for the Norman Y. Mineta San José International Airport at the City's Sole Discretion", was adopted. (11-0.)

2.8 **Adopt a resolution to authorize the City Manager or her designee to execute the storm drain easement agreement with Harjinder & Balwinder Mundh for the installation and usage of a storm drain on the site of Fire Station No. 19 together with all other documents needed to conclude the transaction. CEQA: Exempt File No. PP 00-02-023. Council District 4. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 23, 2012, recommending adoption of a resolution.

Action: Resolution No. 76222, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Her Designee to Execute a Storm Drain Easement Agreement with Harjinder and Balwinder Mundh for the Installation and Usage of a Storm Drain on the Site of Fire Station No. 19", was adopted. (11-0.)

2.9 **Report on bids and award of construction contract for the Water Pollution Control Plant Administration Building Standby Generator project to the low bidder, Guerra Construction, Inc., in the amount of \$147,620, and approval of a contingency in the amount of \$14,800. CEQA: Exempt, File No. PP11-019. (Environmental Services/Public Works)**

Documents Filed: (1) Memorandum from Acting Director of Environmental Services Kerrie Romanow and Director of Public Works David Sykes, dated April 23, 2012, recommending award of construction contract to the low bidder. (2) Letter from Chuck Reed, Chairperson, the Treatment Plant Advisory Committee, dated May 10, 2012, stating concurrence with the Staff recommendation.

2.9 (Cont'd.)

Action: The award of construction contract for the Water Pollution Control Plant Administration Building Standby Generator project to the low bidder, Guerra Construction, Inc., in the amount of \$147,620, with related contingency, was approved. (11-0.)

2.10 **Report on bids and award of construction contract for the Nortech – Zanker Service Lateral Project to the low bidder, Platinum Pipelines, Inc., in the amount of \$578,960, and approval of a contingency in the amount of \$115,000. CEQA: Exempt, File No. PP11-054. (Environmental Services/Public Works)**

Documents Filed: (1) City Council Action Request from Acting Director of Environmental Services Kerrie Romanow and Director of Public Works David Sykes, dated April 23, 2012, recommending award of the contract to the low bidder, with approval of related contingency. (2) Letter from Chuck Reed, Chairperson, the Treatment Plant Advisory Committee, dated May 10, 2012, stating concurrence with the Staff recommendation.

Action: The award of construction contract for the Nortech – Zanker Service Lateral Project to the low bidder, Platinum Pipelines, Inc., in the amount of \$578,960, with related contingency, was approved. (11-0.)

2.11 **Adopt a resolution authorizing the City Manager to execute the First Amendment to the “911 Emergency Medical Services Agreement between the City of San José and the County of Santa Clara Emergency Medical Services Agency” to add Annex C, “Authorized Funding Provided to 911 Emergency Medical Services Provider Organizations.” CEQA: Not a Project, File No. PP10-066(e), Agreements and contracts. (Fire)**

Documents Filed: Memorandum from Fire Chief William L. McDonald, dated April 23, 2012, recommending adoption of a resolution.

Action: Resolution No. 76223, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a First Amendment to the Agreement with the County of Santa Clara Emergency Medical Services Agency”, was adopted. (11-0.)

2.12 **Approval of the proposed Fiscal Year 2011/12- 2016/17 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. CEQA: Exempt, File No. PP12-049. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated April 23, 2012, recommending approval of the work plan.

Action: The Fiscal Year 2011/12- 2016/17 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program was approved. (11-0.)

- 2.13 As recommended by the Rules and Open Government Committee on May 5, 2012, approve a support position for SB 1191 (Simitian) Foreclosure: Landlord-Tenant Relations. (City Manager's Office)
[Rules Committee referral 5/2/12 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 3, 2012, transmitting the recommendation of the Rules and Open Government Committee.

Action: Item 2.13 was dropped.

- 2.14 (a) The City Council accepts the certification of results of an election conducted among active sworn Police Department employees by the City Clerk for the nomination of a Police Department employee representative to fill an unscheduled vacancy on the Board of Administration of the Police and Fire Department Retirement Plan.**
- (b) Appoint James Mason, an active Police Department employee, to the Board of Administration of the Police and Fire Department Retirement Plan for the balance of an unexpired term ending November 30, 2013.**
- (Rules Committee referral 5/9/12)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, presenting recommendations as presented above.

Action: The City Council accepted the certification of results of an election conducted among active sworn Police Department employees by the City Clerk for the nomination of a Police Department employee representative to fill an unscheduled vacancy on the Board of Administration of the Police and Fire Department Retirement Plan and James Mason, an active Police Department employee, was appointed to the Board of Administration of the Police and Fire Department Retirement Plan for the balance of an unexpired term ending November 30, 2013. (11-0.)

- 2.15 Approve the following amendments to the 2011-2012 Appropriation Ordinance and Funding Sources Resolution in the General Fund:**
- (a) Increase the Personal Services Appropriation for the Parks, Recreation and Neighborhood Services Department by \$58,600;**
- (b) Increase the Non-Personal/Equipment Appropriation for the Parks, Recreation and Neighborhood Services Department by \$7,500;**
- (c) Increase Departmental Charges Revenue for the Parks, Recreation and Neighborhood Services Department by \$9,000; and**
- (d) Decrease the City Manager's Office Personal Services appropriation by \$57,100.**
- CEQA: Not a Project; File No. PP10-067(b), Appropriation Ordinance. (Parks, Recreation and Neighborhood Services/City Manager's Office)**
- (Rules Committee referral 5/9/12)**

2.15 (Cont'd.)

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer Maguire, dated May 9, 2012, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29067, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the General Fund for the Parks, Recreation and Neighborhood Services Department Personal Services and Transportation and Environment Committee Parks, Recreation and Neighborhood Services Department for Non-Personal/Equipment; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76224, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 To Adjust Revenues in the General Fund”, were adopted. (11-0.)

2.16 As recommended by the Rules and Open Government Committee on May 9, 2012, approve an opposition position for AB1692 (Wieckowski) Municipal Bankruptcy. (City Manager’s Office)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 9, 2012, transmitting the recommendation of the Rules and Open Government Committee.

Council Member Oliverio presented comments regarding AB1692.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried, an oppose position for AB1692 was approved. (9-2. Noes: Campos, Kalra.)

2.17 As recommended by the Rules and Open Government Committee on May 9, 2012:
(a) Approve the Santos Family Car Show as a City Council sponsored Special Event.
(b) Approve and accept donations from various individuals, businesses or community groups to support the event.
CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 9, 2012, transmitting the recommendation of the Rules and Open Government Committee.

Action: The Santos Family Car Show as a City Council sponsored Special Event was approved and acceptance of donations from various individuals, businesses or community groups to support the event was authorized. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

City Manager Debra Figone reported that Governor Brown released the State budget on May 14, 2012, including a deficit of approximately \$16B.

Council Member Pyle suggested the City Manager issue a letter of concern to the State.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Adopt a resolution authorizing the City Attorney to execute a settlement agreement with the County of Santa Clara releasing the City's claims and agreeing to remove the City's affordability restrictions from the County Children's Shelter property and authorizing the Director of Housing to negotiate and execute all agreements and documents needed to implement the settlement. CEQA: EIR Resolution No. 72767 and addendum thereto (File No. H09-004). (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated May 1, 2012, recommending adoption of a resolution.

Action: Upon motion by Council Member Rocha, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76225, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute a Settlement Agreement with the County of Santa Clara Regarding the County Children's Shelter and Authorizing the Director of Housing to Negotiate and Execute All Agreements and Documents Needed to Implement the Settlement", was adopted. (10-0-1. Absent: Constant.)

4.2 **Accept staff's recommended set of incentives to encourage high rise office and residential tower construction in the next two years including:**

- (a) **Direct the City Attorney to draft an ordinance to delete from the Municipal Code the requirements for breathing air tank replenishment systems.**
- (b) **Approve staff's proposed schedule of expedited processing of high rise development citywide.**

CEQA: Use of the Downtown Strategy 2000 EIR, Resolution No. 72767. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Liccardo, dated May 9, 2012, recommending acceptance of the recommendations outlined in the April 23, 2012 Staff Report and the additional incentives as described below in "Action". (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Economic Development/Chief Strategist Kim Walesh, dated April 23, 2012, recommending acceptance of the Staff recommendations.

Mayor Reed and Council Member Liccardo provided meeting disclosures.

4.2 (Cont'd.)

Director of Planning, Building and Code Enforcement Joseph Horwedel presented the report.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, dated May 9, 2012, accepting the Staff recommendations as outlined in the April 23, 2012 Staff Report and the additional incentives described below in “Action”. Council Member Constant seconded the motion.

Council discussion ensued.

City Attorney Richard Doyle clarified that Items (b), (c) and (d) as described in the memorandum from Mayor Reed and Council Member Liccardo, was specific direction to the City Attorney to return to Council with ordinances to suspend the taxes and a revised resolution on the park fees.

Council Member Pyle expressed opposition to the 50% reduction of the Building and Structure Construction Tax.

Public Comments: Scott Knies and Henry Cord, San José Downtown Association; Erik Schoennauer and Mark Tersini, KT Properties spoke in support to the Staff recommendations and the motion on the floor.

Council Member Herrera requested to amend the motion to include direction to Staff to explore the options of the Architectural Review Committee for achieving outstanding architecture and design excellence. Council Members Liccardo and Constant accepted the amendment.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed and Council Member Liccardo was approved, accepting the Staff recommendations as outlined in the April 23, 2012 Staff report: (1) The following additional incentives for new construction of residential buildings of at least 12 stories in height for the next 1,000 residential units in the Downtown as defined by the Planned Growth Areas Diagram in the Envision San José 2040 General Plan: (2) (a) *Permit Expeditor and Streamlined Planning*: The City Manager will identify a single point of contact to facilitate and coordinate permitting and resolve all issues that may arise in the permitting process. Upon filing of a completed application and with the applicant’s full compliance of regulations relating to public outreach and architectural review, a decision will be reached at a Director’s Hearing within 120 days. (b) *50% Reduction of Building and Structure Construction Tax*. (c) *50% of Commercial-Residential-Mobilehome Park Building Tax*. (d) *Park Fees*: Consistent with Section 2.B of Resolution 7587, as amended by Council action on May 8, 2012, all park fees for multifamily units will remain at 50% of the revised 2012 rates for Downtown development (\$7650/unit) for the remainder of the duration of the operation of this high rise incentive proposal. (e) *Deferral of Fees*: Fees will be paid at the time of issuance of the Certificate of Occupancy. (f) *Inclusionary Requirements*: None of the incentives included in this action are intended to constitute an

4.2 (Cont'd.)

“agree[ment] by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance” for purposes of the Costa-Hawkins Rental Housing Act, California Civil Code, Section 1954.52(b). Accordingly, the City’s inclusionary ordinance shall remain suspended for high rise rental residential development under *Palmer/ Sixth Street Properties v. City of Los Angeles*, (2009) 175 Cal.App.4th 1396. (g) *Waiver of Parking Minimum Requirements*: In consideration of a long term commitment by the developer to offer free participation in EcoPass, car sharing services and enhanced bike parking facilities to residential tenants, the City shall waive minimum parking requirements. (h) *Occupancy of Lower Floors*: Where Staff deems it safe, the City shall allow occupancy of lower floors (for lease up marketing of “model units”) pending interior construction and furnishing of higher floors. (3) Incentive 2b will be provided to any building constructed within the Downtown of an employment-serving use (i.e. office, research and development or retail) regardless of height, until the deadline as described below. (4) To qualify for any of these incentives, the project must break ground by the end of 2013. The 1,000 residential units shall be counted against the 2,500 units under the preexisting “Downtown High Rise Incentive Program” enacted in 2006, to enable fees to return to normal upon any resurgence in the market. Staff requested to explore the options of the Architectural Review Committee for achieving outstanding architecture and design excellence. (8-2-1. Noes: Kalra, Pyle. Absent: Oliverio.)

4.3 **Consideration of an ordinance rezoning the real property located on the north side of Story Road, approximately 150 feet westerly of McCreery Avenue (1841 Story Road) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District to allow commercial uses and facilitate the reconstruction of a fast food restaurant and drive-through use on a 0.73 gross acre site (Richard R. Anderson, Deborah M. Anderson, and Jeffery M. Filice, Sr., trustees, owners). SNI: East Valley/680 Communities. CEQA: EIR Resolution No. 76041.**

C12-008 – District 5

Action: Continued to June 05, 2012 per Administration.

- ## 4.4
- (a) **Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with 1st ACT Silicon Valley to design and construct the expansion and renovation of Parque de los Pobladores with a City contribution of up to \$98,000.**
 - (b) **Adopt a resolution approving the closure of First Street between Williams Street and Reed Street in accordance with California Vehicle Code Section 21101(a)(1) on the ground that, that portion of First Street is no longer needed for vehicular traffic.**
 - (c) **Adopt Appropriation Ordinance Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 3 (Fund 380):**

- 4.4 (c) (1) **Establish the Parque de los Pobladores Pavement-to-Plaza project to the Parks, Recreation and Neighborhood Services Department for \$78,000.**

- (2) **Decrease the Ending Fund Balance by \$78,000.**

CEQA: Exempt, File No. PP12-037. (Economic Development/Public Works/Department of Transportation/Parks, Recreation and Neighborhood Services/City Manager's Office) (Deferred from 5/8/12 – Item 4.1)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated May 15, 2012, recommending approval of the Staff recommendations with further direction as described in “Action”. (2) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, Director of Public Works David Sykes, Director of Transportation Hans Larsen, Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer Maguire, dated April 25, 2012, recommending adoption of resolutions and appropriation ordinance amendments.

Council Member Liccardo, City Manager Debra Figone and Director of Economic Development/Chief Strategist Kim Walesh disclosed that each serve on the Catalyst Advisory Team to 1st Act Silicon Valley.

Director of Economic Development/Chief Strategist Kim Walesh and Connie Martinez, 1st Act Silicon Valley presented the report.

Public Comments: Speaking in opposition to the removal of the parking spaces and not enough public input were Dan Pulcrano, Metro; Alexandra Dorian, Emile's Restaurant; Alan Marques, Heroes Martial Arts; Michael Dorian, Briand Properties, LLC; Gary Schaezlein and James Rowen.

Speaking in favor of the Staff recommendations were Pete Yolstad, Market-Almaden Neighborhood; Marlena Lynn, Anjee Helstrup-Alvarez, MACLA; Chris Esparza, Giant Creative; Joel Slayton, ZERO1; Christine Jeffers, San José Museum of Quilts and Textiles; Rob Steinberg, Steinberg Architects; Cathy Kimball and Scott Knies, San José Downtown Association.

City Attorney Richard Doyle responded to questions from Mayor Reed and clarified that there are two different laws that allow for permanent closure of a street.

Motion: Council Member Liccardo moved approval of his amended memorandum, dated May 15, 2012, with revisions as indicated in italics and described in “Action”; and acceptance of the Staff recommendations. Council Member Campos seconded the motion.

City Manager Debra Figone, Director of Economic Development/Chief Strategist Kim Walesh, Downtown Manager Lee Wilcox, Deputy Director for Transportation Planning Projects Manuel Pineda and Connie Martinez, 1st Act Silicon Valley responded to Council questions and concerns.

4.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 76226, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with 1st Act Silicon valley to Design and Construct the Expansion and Renovation of Parque de Los Pobladores with a City Contribution of Up To \$98,000”; Resolution No. 76227, entitled: “A Resolution of the Council of the City of San José Approving the Closure of First Street Between Williams Street and Reed Street in Accordance with California Vehicle Code Section 21101(A)(1) on the Basis that the Portion of First Street is no Longer Needed for Vehicular Traffic” and Ordinance No. 29068, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 3 for the Parque de Los Pobladores Pavement-To-Plaza Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted; the amended memorandum from Council Member Liccardo, dated May 15, 2012, was approved: (1) The City Manager was authorized to negotiate an agreement with 1st Act Silicon Valley to design and construct the expansion and renovation of Parque De Los Pobladores, but to return to Council no later than *June 12, 2012*, to seek final Council authorization on execution of that agreement. (2) In the interim, the City Manager shall: (a) Convene a design charrette among *all* key stakeholders, consisting of tenant businesses, property owners and art groups along South First Street, including those occupying the blocks north of the project, to consider alternative configurations of the Parque de Los Pobladores expansion within the funding constraints and grant guidelines for the project. (b) Consider and return to Council with a set of options to address concerns about loss of on-street parking South First Street businesses, including but not limited to: (1) The conversion of the “South Hall Tent” to public parking immediately upon the completion of the Convention Center expansion. (2) Installation of diagonal parking on adjacent streets where room allows and on South First Street south of the proposed street closure. (3) Installation of parking meters along Market Street to expand on-street capacity there. (4) Allowance of signage that clearly identifies any businesses, art institutions or other tenants whose access is in any way compromised by a potential street closure. (11-0.)

4.5 **Conduct a public hearing and adopt a resolution to vacate a portion of S. Monroe Street, 300 feet north of Tisch Way. CEQA: Mitigated Negative Declaration, File No. PDC10-018. Council District 6. (Public Works)** **(Deferred from 5/1/12 – Item 4.3 and 5/8/12 – Item 4.2)**

Items 4.5 and 4.6 were heard together.

Documents Filed: Memorandum from Director of Public Works David Sykes, dated April 9, 2012, recommending conducting a public meeting and adoption of a resolution.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Mayor Reed provided meeting disclosures.

4.5 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Resolution No. 76228, entitled: "A Resolution of the Council of the City of San José Vacating a Portion of Monroe Street, Between Scott Street and Tisch Way", was adopted. (10-0-1. Absent: Chu.)

4.6 Adopt a resolution:

- (a) **Declaring 4,313 square feet of vacated street on South Monroe, 300 feet north of Tisch Way surplus to the needs of the City;**
- (b) **Approving an agreement between the City and KB HOME South Bay, Inc., for sale of the property in the amount of \$300,000; and**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

CEQA: Exempt, File No. PDC10-018. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 16, 2012, recommending adoption of a resolution.

Mayor Reed provided meeting disclosures and opened the public hearing.

Public Comments: Dehab N. Maile spoke in support to the Staff recommendations.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Resolution No. 76229, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Located on South Monroe Street, 300 Feet North of Tisch Way as Surplus to the Needs of the City, Approving an Agreement with KB Home South Bay, Inc. for Sale of the Property in the Amount of \$300,000 and Authorizing the City Manager or Designee to Negotiate and Execute Certain Documents Necessary to Complete the Transaction", was adopted. (10-0-1. Absent: Chu.)

NEIGHBORHOOD SERVICES

5.1 Approval of an agreement with the Roman Catholic Welfare Association of San José (Archbishop Mitty High School) for the funding, renovation, operation, maintenance, and joint use of John Mise Park with the following terms:

- (a) **Term of thirteen years with an automatic extension of 12 years if Mitty complies with all terms of the agreement for a possible total term of twenty-five years.**
- (b) **Financial contribution in the amount of up to \$3,500,000 from City and up to \$375,000 from Archbishop Mitty High School for renovation of the sports field.**

- 5.1 (c) In-kind contribution from Archbishop Mitty High School for park maintenance in exchange for exclusive use of the sports field and parking spaces during certain hours.
- (d) Financial contribution of up to \$175,000 from Archbishop Mitty High School for replacement of the artificial turf for the sports field.
- (e) Exempt the agreement from the liquidated damages requirements of the City's Prevailing Wage Policy as set forth in Resolution No. 71584, adopted by the City Council on May 23, 2003.
- CEQA: Categorically Exempt, File No, PP12-021. Council District 1. (Parks, Recreation and Neighborhood Services)**

Action: Deferred to May 22, 2012 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Approve an ordinance to amend Chapter 9.10 of Title 9 of the San José Municipal Code to amend Section 9.10.1435 to require the exclusive solid waste franchisee to pay a Source Reduction and Recycling Fee (AB939 Fee).
- (b) Adopt a resolution to amend the Schedule of Fees and Charges (Resolution No. 72737 as amended) to revise the Source Reduction and Recycling Fee (AB939 Fee) for commercial solid waste collected city-wide for two exclusive franchise districts at \$3,800,000 per fiscal year to be paid by the exclusive franchisee.
- (c) Adopt a resolution fixing and determining Maximum Commercial Solid Waste Services Rates in the City of San José pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchise Agreements between the City of San José and Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County, including the total processing costs for organic processing services.
- CEQA: Not a Project, File No. PP10-067 (a), Increase or Adjustment to Fees, Rates & Fares. (Environmental Services/City Manager's Office)**

Documents Filed: Replacement memorandum from Acting Director of Environmental Services Kerrie Romanow and Budget Director Jennifer Maguire, dated May 4, 2012, transmitting a revised AB939 fee of \$3,800,000 and lower maximum customer service rates and approval of an ordinance and adoption of resolutions.

Motion: Council Member Herrera moved approval of the staff recommendations. Council Member Rocha seconded the motion.

Public Comments: Terry Benedict, Ferma Corporation, suggested that Council reexamine the new higher pricing because he felt it would cost the City business. Brock Hill, Premier Recycle Company, expressed opposition to the Staff recommendations.

7.1 (Cont'd.)

Deputy Director of Environmental Services Jo Zientek responded to Council questions and concerns.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29069, entitled: "An Ordinance of the City of San José Amending Chapter 9.10 of Title 9 of the San José Municipal Code to Amend Section 9.10.1435 to Require the Franchisee With a Commercial Solid Waste and Recyclables Franchise Based on Geographic Service Districts to Pay a Source Reduction and Recycling Fee", was passed for publication; Resolution No. 76230, entitled: "A Resolution of the Council of the City of San José Amending the Schedule of Fees and Charges (Resolution No. 72737 as Amended) To Revise the Source Reduction and Recycling Fee for Commercial Solid Waste" and Resolution No. 76231, entitled: "A Resolution of the Council of the City of San José Fixing and Determining Maximum Commercial Solid Waste Services Rates in the City of San José Pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement Between the City of San José and Allied Waste Services of North America, LLC DBA Allied Waste Services of Santa Clara County Including the Total Processing Fee for Organics Processing Services, Effective July 1, 2012", were adopted. (11-0.)

- 7.2
- (a) **Approve an ordinance amending Chapter 9.10 of Title 9, and Sections 4.80.3070 and 4.80.3080 of Title 4 of the San José Municipal Code to conform the Code to modifications associated with the new commercial solid waste system, and to existing practice for the use ratepayer revenue in the Integrated Waste Management Fund, effective July 1, 2012.**
 - (b) **Adopt a resolution amending the Administrative Citation Schedule of Fines to escalate fines for the unauthorized collection of garbage and rubbish.**
 - (c) **Adopt a resolution amending the Commercial Franchise Fee (Resolution No. 75601) to establish an annual supplemental franchise fee in the amount of \$1,000,000 for any franchisee granted both geographic collection districts, and to set the franchise fee at \$0 for construction and demolition debris and residential clean-out material collected by non-exclusive commercial solid waste haulers.**

CEQA: Negative Declaration, Resolution No. 75916, File No. PP10-157. (Environmental Services)

Documents Filed: Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated April 23, 2012, recommending approval of an ordinance and adoption of resolutions.

7.2 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Council Member Rocha and carried unanimously, Ordinance No. 29070, entitled: "An Ordinance of the City of San José Amending Chapter 9.10 of Title 9 and Sections 4.80.3070 and 4.80.3080 of Title 4 of the San José Municipal Code to Conform the Code to Modifications Associated With the New Commercial Solid Waste System and To Existing Practice for the Use of Ratepayer Revenue in the Integrated Waste Management Fund, Effective July 1, 2012", was passed for publication; Resolution No. 76232, entitled: "A Resolution of the Council of the City of San José Amending the Administrative Citation Schedule of Fines for Certain Violations of the San José Municipal Code in Order to Modify Certain Administrative Fines for Violations Related to Chapter 9.10 of the San José Municipal Code and Repealing Resolution No. 76084" and Resolution No. 76233, entitled: "A Resolution of the Council of the City of San José Setting Commercial Solid Waste Collection Franchise Fees", were adopted. (11-0.)

7.3 **Conduct a public hearing on the applications of the following companies for Commercial Solid Waste and Recyclables Collection Franchises for the non-exclusive collection and transport of Residential Clean-Out Material and Construction and Demolition Debris; approve the ordinances granting the franchises; and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreements for the non-exclusive collection and transport of Residential Clean-Out Material and Construction and Demolition Debris for a term from July 1, 2012 to June 30, 2014 with the option of three one-year extensions.**

- (a) All Points Roll Off, Inc.
 - (b) Environmental Resource Recovery, Inc. dba Valley Recycling
 - (c) Ferma Corporation
 - (d) GreenWaste Recovery Inc.
 - (e) GreenWaste Recovery Inc. dba \$99.00 Debris Box Service
 - (f) Guadalupe Rubbish Disposal Co., Inc. dba Guadalupe Recycling and Disposal
 - (g) Haul Away Today
 - (h) Lam Hauling, Inc. dba 7 Days Box
 - (i) Mission Trail Waste Systems, Inc. dba Recycle West
 - (j) Jonna Corporation, Inc. dba Premier Recycle Company
 - (k) R & D Mendes Enterprises, Inc. dba Accurate Cleaning Systems
 - (l) Recology South Bay
 - (m) Republic Services, Inc.
 - (n) Revolution Resource Recovery, LLC
 - (o) San José Conservation Corps and Charter School dba San José Conservation Corps
 - (p) Universal Recycling Solutions, Inc.
 - (q) Waste Connections of California, Inc. dba GreenTeam of San José
- CEQA: Exempt; File No. PP08-228. (Environmental Services)**

7.3 (Cont'd.)

Documents Filed: (1) Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated April 23, 2012, recommending conducting a public hearing and approval of ordinances. (2) Proofs of Publications of Notices of Public Hearings, executed on April 27, 2012 and May 4, 2012, submitted by the City Clerk.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Herrera, seconded by Council Member Rocha and carried, Ordinance No. 29071, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Allpoints Roll Off, Inc."; Ordinance No. 29072, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Environmental Resource Recovery, Inc. DBA Valley Recycling"; Ordinance No. 29073, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Ferma Corporation"; Ordinance No. 29074, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Greenwaste Recovery, Inc."; Ordinance No. 29075, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Greenwaste Recovery, Inc. DBA \$99.00 Debris Box Service"; Ordinance No. 29076, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Guadalupe Rubbish Disposal Co., Inc. DBA Guadalupe Recycling and Disposal"; Ordinance No. 29077, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Haul-Away Today"; Ordinance No. 29078, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Lam Hauling, Inc. DBA 7 Days Box"; Ordinance No. 29079, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Mission Trail Waste Systems, Inc. DBA Recycle West"; Ordinance No. 29080, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Jonna Corporation, Inc. DBA Premier Recycle Company"; Ordinance No. 29081, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to R&D Mendes Enterprises, Inc. DBA Accurate Cleaning Systems"; Ordinance No. 29082, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Recology South Bay"; Ordinance No. 29083, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Republic Services, Inc."; Ordinance No. 29084, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Revolution Resource Recovery, LLC"; Ordinance No. 29085, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to San José Conservation Corps and Charter School DBA San José Conservation Corps";

7.3 (Cont'd.)

Action: (Cont'd.)

Ordinance No. 29086, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Universal Recycling Solutions, Inc.” and Ordinance No. 29087, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Waste Connections of California, Inc. DBA Greenteam of San José”, were passed for publication. (10-1. Noes: Nguyen.)

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:13 p.m.

RECESS/RECONVENE

The City Council recessed at 5:13 p.m. from the afternoon Council Session and reconvened at 7:05 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - Herrera. (Excused)

City Clerk Dennis Hawkins, CMC, read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Rocha, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Herrera.)

CEREMONIAL ITEMS

1.3 Presentation of commendations to Daniel Sanchez and Corazon Tomalinas for being recognized as Champions of Change by the White House in honor of their work to prevent youth violence in San José. (Mayor)

Mayor Reed and Vice Mayor Nguyen recognized and commended Daniel Sanchez and Corazon Tomalinas for being recognized as Champions of Change by the White House in honor of their work to prevent youth violence in the City of San José.

1.6 Presentation of a commendation to the San José Chapter of Jack and Jill of America, Inc. for hosting an anti-bullying forum to not only bring awareness to the situation but also present strategies and solutions to stop the cycle of bullying. (Pyle)

Mayor Reed and Council Member Pyle recognized and commended the San José Chapter of Jack and Jill of America, Inc. for its outstanding efforts to bring awareness, strategies and solutions to stop the cycle of bullying.

STRATEGIC SUPPORT SERVICES

3.3 Public Hearing on the City's Proposed Operating and Capital Budgets for the Fiscal Year 2012 -2013, the Proposed Five-Year Capital Improvement Program for 2013-2017, and the Proposed Fees and Charges Report for the Fiscal Year 2012-2013. (City Manager's Office)

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on April 6, 2012, submitted by the City Clerk.

Mayor Reed presented opening remarks and opened the public hearing.

3.3 (Cont'd.)

Public Comments: The following speakers expressed comments about restoring hours to the existing libraries, opening the new libraries, restoring all senior transportation services, improving traffic issues, restoring the police substation and assigning more police officers to the Seven Trees Area were, Jon Max Reger, Elisa Koff-Ginsborg, Jo Kenny, Tom Lineberger, Emilie Gatfield, Shawna Nixon, Fatima de Guzman and Shawn Cartwright.

Mayor Reed closed the public hearing and offered closing comments.

The Public Hearing was continued to June 11, 2012. There was no Council action.

NEIGHBORHOOD SERVICES

5.2 **Approve an ordinance amending Title 10 of the San José Municipal Code to add a new chapter relating to social host responsibility to deter the service of alcoholic beverages to and consumption of alcoholic beverages by underage persons at certain gatherings. CEQA: Categorically Exempt, File No. PP12-010. (City Manager's Office)**

Documents Filed: (1) Memorandum from Council Member Pyle, dated May 11, 2012, recommending approval of the Staff recommendations. (2) Memorandum from Deputy City Manager Norberto Dueñas, dated May 3, 2012, recommending approval of an ordinance.

Deputy City Manager Norberto Dueñas offered opening remarks. Assistant to the City Manager Kip Harkness provided the report. Assistant Chief of Police Rikki Goede was present.

Motion: Council Member Pyle moved approval of her memorandum and the Staff recommendations. Vice Mayor Nguyen seconded the motion.

Public Comments: Speaking in support to the memorandum from Council Member Pyle and the Staff recommendations were, Gabrielle Autolovich and Bobby Lorilla, Voices United; Layla Forooghi, Rogelia Balderas, Prevention Division of Alcohol and Drug Services; Joshua Howard, California Apartment Association; Mary Macias, Cecilia Lopez and Shawn Cartwright.

Assistant Chief of Police Rikki Goede and City Attorney Richard Doyle responded to Council questions and concerns.

Council discussion ensued.

5.2 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29088, entitled: “An Ordinance of the Council of the City of San José Amending Title 10 of the San José Municipal Code to Add a New Chapter Relating to Social Host Responsibility to Deter the Service of Alcoholic Beverages To and Consumption of Alcoholic Beverages by Underage Persons at Certain Gatherings”, was passed for publication. (10-0-1. Absent: Herrera.)

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the northwest corner of Curtner and Union Avenue (2073 Curtner Avenue), from CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District to allow for commercial uses including a restaurant with a drive-through on the 1.34 gross acres site (Lamb Desert Rose LLC, Owner). CEQA: Mitigated Negative Declaration.
PDC12-001 – District 9**

Documents Filed: Memorandum from Council Member Rocha, dated May 10, 2012, recommending deferral of Item 11.2 to June 19, 2012.

Action: Continued to June 19, 2012 per Administration.

- 11.3 Consideration of an ordinance amending Section 20.40.100 of Chapter 20.40 (Commercial Zoning Districts), Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts), to add a new Part 12.5 of Chapter 20.80 (Specific Use Regulations), to add a new section 20.200.875 to Chapter 20.200 (Definitions), and rescinding the suspension of the effectiveness of Sections 20.100.1500, 20.100.1510, 20.100.1520, 20.100.1525 and 20.100.220 of Chapter 20.100 (Part 13, Zoning Code Verification Certificate), all of Title 20 of the San Jose Municipal Code (the Zoning Code) to establish land use regulations pertaining to Payday Lending establishments. CEQA: EIR Resolution No. 76041. Director of Planning, Building and Code Enforcement recommends approval and Planning Commission recommends approval (6-0-1; Commissioner Platten absent)
Citywide**

Documents Filed: (1) The memorandum from Council Members Kalra, Liccardo, Rocha and Campos, dated May 11, 2012, recommending approval of the ordinance as recommended by Staff, adopt the modifications by the Planning Commission, with modifications as indicated in “Action”. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 9, 2012, providing information on the possible modification to the proposed ordinance to include a “cap” on the total number of payday lending establishments in San José. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 30, 2012, transmitting the recommendation of the Planning Commission of approval.

11.3 (Cont'd.)

Documents Filed: (Cont'd.)

(4) Proof of Publication of Notice of Public Hearing, executed on April 6, 2012, submitted by the City Clerk. (5) Letter from Nielsen Merksamer Parrinello Gross & Leoni, LLP to City Attorney Richard Doyle, dated May 11, 2012, regarding the proposed payday lending ordinance. (6) List of Payday Lending Establishments in San José, dated May 15, 2012. (7) Approximately 500 letters submitted for the record in opposition to the Proposed Payday Lending Ordinance, all dated May 15, 2012.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti presented comments.

City Attorney Richard Doyle and Assistant City Manager Edward K. Shikada responded to Council questions and concerns.

Motion: Council Member Kalra moved approval of the amended memorandum he cosigned with Council Members Liccardo, Rocha and Campos, dated May 11, 2012, approving the ordinance as recommended by Staff, adopting the modifications by the Planning Commission and limiting the number of payday lenders permitted to operate in the City of San José at 39, the current number of existing establishments. Council Member Campos seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: Expressing support to the ordinance were, Ivonne Montes de Oca, and Pat Kracko, Silicon Valley Community Foundation; Wendy Ho, United Way Silicon Valley; Karen Sinunu-Towery, District Attorney's Office; Peter A. Szego, AARP; Poncho Guerara, SHCS; Sandy Perry, CHAM Deliverance Ministry; Evelyn Bonato, Rosaline Raj, Ricky Alexander, Christian Luna, Debbie Meza, Karen Domas and Steven Medeiros, Jay Pecot, Sacred Heart; Ann Marquart, Project Sentinel; Susan Price-Jang, Burbank Del Monte Neighborhood Action Committee; Tom Linebarger, Emillie Gatfield, Jemahl Amen, Center for Responsible Lending; David Sharples, Shane Virtue, ACCE; Judy Purrington, San José Peace and Justice Coalition; Kyra Kazantzis, CAPP; Kenny Moeller, Catholic Charities; Gerardo Dominguez, Rabiah Khalid, Asian Pacific Islander Justice Coalition; Shaunn Cartwright, Pastor Jeff Moore, San José NAACP; Liana Molina, California Reinvestment Coalition; Richard Konda, Asian Law Alliance; Gwendy Donaker Brown, Opportunity Fund; Gina Gates, PACT; Elena Robles, Elisa Koff-Ginsborg, Elaine Harris, Working Partnerships; Matt Huerta, Neighborhood Housing Services Silicon Valley; Haydee Moreno, Self Help Federal Credit Union; Joseph Rosas, Lizette Negrete, Erica Castellanos, California Check Cashing Stores, LLC; Jon Max Reger and Shawn Stange.

Expressing opposition to the Staff recommendations were Thomas Leonard, California Financial Service Provider; Araceli Ramirez Adaire, Dora Moreno, Mike Rae, Mayra Ochoa, Tony Sidhu California Check Cashing Stores, LLC; Christina Parker, Check into Cash and Maritza Maldonado.

11.3 (Cont'd.)

A short discussion followed.

Action: On a call for the question, the motion carried, the recommendation of the Planning Director and the Planning Commission was approved, the amended memorandum from Council Member Kalra, Liccardo, Rocha and Campos, dated May 11, 2012, was accepted, approving the ordinance as accepted by Staff with the following modifications: (1) Adopt the modifications recommended by the Planning Commission. (2) Limit the number of payday lenders permitted to operate in the City of San José at 39, the current number of existing establishments and Ordinance No. 29089, entitled: “An Ordinance of the Council of the City of San José Amending Title 20 of the San José Municipal Code to Amend Section 20.40.100 of Chapter 20.40 (Commercial Zoning Districts), To Amend Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts), To Add a New Part 12.5 to Chapter 20.80 (Specific Use Regulations), To Add a New Section 20.200.875 to Chapter 20.200 (Definitions), and Rescinding the Suspension of the Effectiveness of Sections 20.100.1500, 20.100.1510, 20.100.1520, 20.100.1525 and 20.100.220 Under Ordinance No. 28991, All in Order to Establish Land Use Regulations Pertaining to Payday Lending Establishments”, was passed for publication, as amended. (9-1-1. Noes: Constant. Absent: Herrera.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10102	West side of Guadalupe Mines Rd, approximately 1,130 feet southerly of Via Campagna	10	Brookfield Brookside, LLC	97 Lots / 89 Units	Single Family Detached	Approve
10100	West side of Monroe Street north of Tisch Way	6	KB Home South Bay Inc.	38 Lots / 104 Units	Multi-Family Attached	Approve

OPEN FORUM

- (1) Tom Linebarger presented suggestions on how local government can investigate and prevent foreclosures.
- (2) Shaunn Cartwright urged the Council to investigate fraud with regard to the foreclosures in the City of San José.
- (3) Joseph Rosa provided his views on the issues of homelessness.
- (4) Jon Max Reger suggested the Council vigorously pursue revenue generation.

ADJOURNMENT

The Council of the City of San José was adjourned at 9:50 p.m. in memory of Randy Ritchie, who served as a waiter at Original Joe's for 30 years. (Oliverio)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

smd/05-15-12MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/city> or <http://www.sanjoseca.gov/civiccentertv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.